

DEVIN DERHAM-BURK #104353
CHAPTER 13 STANDING TRUSTEE
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

STAVIS, AMY

Debtor(s)

)
)
) Chapter 13
) Case No. 09-5-6517 RLE

)
) SECOND AMENDED TRUSTEE'S OBJECTION TO
) CONFIRMATION WITH CERTIFICATE OF
) SERVICE

)
)
) Pre-Hearing Conference Date: NOVEMBER 12, 2009
) Pre-Hearing Conference Time: 2:00 PM
) Place: 280 S. 1st Street Room 3099
) San Jose, CA
) Judge: Roger Efremsky

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this Pro-tanto
Plan for the following reasons:

1. The Trustee is unable to determine if the plan is feasible pursuant to 11 U.S.C. § 1325
(a)(6). The Plan suggests that the monthly payments paid directly by the debtor to Chase
Home Equity would be \$758; however, according to Schedule J, the debtor is only
budgeting for \$484 per month towards the home equity loan. It appears the debtor would
have a monthly deficit of \$938.

- 1 2. The Trustee is unable to determine whether 11 U.S.C. § 1322(b)(5) is met. The debtor
2 lists the ongoing monthly mortgage payment to Chase Home Equity in Section 4 of the
3 Plan as \$758. In Schedule J and the Statement of Current Monthly Income the debtor
4 lists the payment as \$758. The Trustee requests the appropriate schedule be amended to
5 list the correct payment amount.
6
- 7 3. The plan is in violation of 11 U.S.C. § 1325(a)(4), in that creditors would receive more
8 under Chapter 7 liquidation. There is excess equity in the debtor's personal property in
9 the amount of \$237,740, while unsecured creditors will receive nothing under the
10 proposed protanto plan. Unsecured creditors must receive no less than \$237,740.
11
- 12 4. The plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6). The debtor is proposing a
13 'base plan,' with monthly plan payments of \$750.00 for 60 months, for a total 'pot' of
14 \$45,000.00. This amount is not enough to cover priority debt, Attorney fees and Trustee
15 fees. An amended plan must be filed. (Note: Internal Revenue Service filed a priority
16 claim in the amount of \$48,101.)
17
- 18 5. The Trustee is unable to determine whether 11 U.S.C. § 1322(b)(5) is met. According to
19 the Plan, Lexus Financial Services is listed in Section 4 for the debtor to be the disbursing
20 agent. However, Schedule H lists Toyota Financial Services as the creditor for the lease
21 contract on the 2008 Lexus. The Trustee requests the appropriate schedule be amended.
22
- 23 6. The debtor has failed to comply with 11 U.S.C. § 521 (a)(1)(B)(iii). The Statement of
24 Financial Affairs, #1 fails to list the debtor's income for 2007.
25
- 26 7. The debtor is not in compliance with Fed. R. Bankr. P 2002(b) because the debtor failed
27 to serve Jess & Cindy Walker a copy of the Amended Schedule D.
28

- 1 8. The debtor is not in compliance with Fed. R. Bankr. P 2002(b) and 11 U.S.C. §
2 1325(a)(1) because the debtor failed to serve all creditors a copy of the Amended
3 Schedule C.
- 4 9. The Trustee is unable to determine whether all of the debtor's projected disposable
5 income is being applied to pay unsecured creditors under the plan as required by 11
6 U.S.C. § 1325(b)(1)(B). The Trustee requests the debtor provide a Profit and Loss
7 Statement for January through July 2009.
- 8 10. The Trustee is unable to determine whether all of the debtor's projected disposable
9 income is being applied to pay unsecured creditors under the plan as required by 11
10 U.S.C. § 1325(b)(1)(B). The Trustee requests the debtor provide an itemization in the
11 form of a declaration along with supporting documents for the business expenses listed
12 on line 60.
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18 Dated: October 28, 2009

/S/ Devin Derham-Burk

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20 Chapter 13 Trustee
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Said envelopes were addressed as follows:

CHARLES GREENE
84 W SANTA CLARA ST #770
SAN JOSE CA 95113

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